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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 LARRY CHARLES CLEVELAND,  
12 Petitioner

13 v.

14 J. SOTO,  
15 Respondent.

Case No. CV 16-2118-DSF (GJS)

**ORDER ACCEPTING FINDINGS  
AND RECOMMENDATIONS OF  
UNITED STATES MAGISTRATE  
JUDGE**

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17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition and all  
18 pleadings, motions, and other documents filed in this action, the Report and  
19 Recommendation of United States Magistrate Judge (“Report”), Petitioner’s  
20 Objections to the Report, Petitioner’s June 13, 2016 request asking the Magistrate  
21 Judge to reconsider the Report, and the Magistrate Judge’s order denying the  
22 reconsideration request (“Reconsideration Order”). Pursuant to 28 U.S.C. §  
23 636(b)(1)(C) and Fed. R. Civ. P. 72(b), the Court has conducted a de novo review of  
24 those portions of the Report to which objections have been stated.

25 Petitioner states four objections to the report. First, he reiterates his argument  
26 that the Supreme Court’s decision in *Riley v. California*, 134 S. Ct. 2473 (2014),  
27 justified filing a “mixed” petition and warrants imposing a *Rhines* stay. The Report  
28 (at pp. 7-8) adequately explains why Petitioner’s *Riley* argument lacks merit.

Moreover, since the Report issued, the Ninth Circuit has confirmed that *Riley* is not retroactive. *See Ly v. Beard*, No. 15-70939, 2016 WL 3318881, at \*1 (9th Cir. June 15, 2016). Petitioner next asserts perfunctorily that his “confusion” about his statute of limitations deadline satisfies the *Rhines* good cause requirement. For the reasons set forth in the Reconsideration Order, this second objection is unpersuasive. Third, Petitioner contends that the Magistrate Judge purportedly found a *Rhines* stay unwarranted on the ground that the California Supreme Court’s dockets did not show a habeas filing by Petitioner. Petitioner, however, mischaracterizes the Report. (*See* Report at pp. 7-9.) Finally, as his fourth objection, Petitioner argues that his appellate counsel’s failure to raise a *Riley* claim on appeal would constitute “cause” to excuse any procedural default of the claim in this Court. Whether or not this assertion is correct legally, it has no bearing on the *Rhines* stay issue, for the reasons explained in the Report and the Reconsideration Order.

Nothing in the Objections affects or alters the analysis and conclusions set forth in the Report. Having completed its de novo review, the Court accepts the findings and recommendations set forth in the Report.

Accordingly, **IT IS ORDERED** that:

- (1) Petitioner’s request for a *Rhines* stay is DENIED; and
- (2) Within 21 days of this Order, Petitioner is directed to elect one of his three Options set forth in the Report at pp. 9-10. Petitioner is cautioned that the failure to elect one of these three Options in a timely manner will be deemed to constitute an election of Option One, and as a result, this action will be dismissed without prejudice.

**IT IS SO ORDERED.**

**7/12/16**

DATE: \_\_\_\_\_

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DALE S. FISCHER  
UNITED STATES DISTRICT JUDGE